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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TORY ANGELIQUE NEAL,

Defendant and Appellant.

A145371

(Sonoma County  
Super. Ct. No. SCR639025)

Defendant Tory Neal appeals from an order denying her “invitation” under Penal Code section 1170, subdivision (d), to recall her state prison sentence.<sup>1</sup> (See *People v. Loper* (2015) 60 Cal.4th 1155 [similar order under § 1170, subd. (e), is appealable].)

Defendant’s appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the order. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of her right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude no arguable issues are presented for review, and affirm the order.

Since defendant challenges only the court’s refusal to accept her invitation to recall the sentence, we confine our review to that portion of the record. In January 2014, defendant pleaded no contest to first degree robbery in concert (§§ 211, 213, subd. (a)(1)(A)), threatening a witness (§ 140, subd. (a)), and unlawfully taking or driving a

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

vehicle (Veh. Code, § 10851, subd. (a)). She also admitted a weapon enhancement in connection with the robbery charge (Pen. Code, § 12022, subd. (b)(1)). The trial court later described the most significant crimes as involving defendant rushing into the home of a couple with two other individuals, threatening and assaulting the couple with a knife, bat, pepper spray, and verbal threats, ransacking the house, stealing their property (including a television), and sending threatening texts to one of the victims.

The prosecution urged and Probation recommended that defendant be sentenced to 11 years in state prison. Defendant asked the court to order a 90-day diagnostic report before pronouncing sentence, which the court did. The report recommended against probation and that the court impose a state prison sentence. The prosecution and Probation endorsed this recommendation. Defendant asked for probation. The court struck a middle ground and on June 6, 2014, suspended execution of an 11-year prison sentence and placed defendant on probation conditioned on serving one-year in the county jail, but with release to a recovery program as soon as a bed was available. The court warned defendant she had “one chance” to avoid the prison sentence.

Within three weeks, Probation filed a revocation petition, alleging defendant had violated the terms and conditions of her probation by being discharged from the recovery program for negative and confrontational behaviors. Defendant admitted the violation. Despite the prior warning, the court reinstated probation given numerous letters supporting defendant, with the added condition she complete a residential treatment program and six-month aftercare program. The court warned defendant if she violated probation again, she would “be going to prison.”

Five months later, Probation filed another revocation petition, alleging defendant had been discharged from the treatment program for smoking heroin and upon discharge had not reported to her probation officer. Defense counsel advised the court defendant appeared to be dealing with some “significant” mental health issues and was, for the first time, on medication for depression, and asked that probation be reinstated and defendant

returned to the treatment program. After defendant admitted the violations,<sup>2</sup> the court continued the case for sentencing to obtain additional information about defendant's behavior and conduct on probation, including a "heartfelt" letter from defendant as to her personal insight about her behavior.

Defendant filed a sentencing memorandum which, among other things, discussed her "mental health challenges" and stated she had been taking anti-depression medication for three years and had recently shown "signs of disassociation." After hearing from defense counsel and the prosecution at the continued sentencing hearing on January 8, 2015, the court refused to reinstate probation and ordered execution of the prison sentence, imposed fines and fees, and order 370 days of presentence custody credits. Among other things, the court observed that while defendant had a supportive family, there did not seem to be any impetus on her part to follow through with addressing her addictions and violent behaviors.

Five weeks later, on February 18, defendant filed a motion, which she later agreed was only an "invitation," asking the court to recall the sentence (§ 1170, subd. (d)). Defendant suggested the court had not had before it all relevant evidence pertaining to her mental health issues and had it had that information, the court might have reinstated probation. The prosecution filed written opposition. Following a hearing on April 9, 2015, the court declined to recall the sentence, explaining at some length that at sentencing it had reviewed all relevant materials, including the 90-day diagnostic report which included some indication of mental health issues. In the court's view nothing defendant belatedly presented changed the court's view of the circumstances, including the seriousness of the crimes and its prior determination that defendant had had sufficient opportunities to avoid prison.

Defendant was ably represented by counsel during the probation violation and recall proceedings. Indeed, the trial court commented: "Your lawyer has fought tenaciously for you . . . there's nothing that she didn't do." The trial court, in turn, acted

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<sup>2</sup> Defendant initially offered to admit only that she was "around" roommates who had heroin and failed to report their conduct to the program.

well within its discretion in declining to recall the sentence. (See *Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1833 [court's motion to recall sentence "necessarily involves the exercise of discretion"].) The court afforded defendant adequate opportunity to present her position, and it thoughtfully explained on the record its reasons for declining to recall the sentence.

#### **DISPOSITION**

After a review of the relevant record, we find no arguable issues and affirm the order declining to recall the sentence.

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Banke, J.

We concur:

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Humes, P. J.

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Dondero, J.

A145371, *People v. Neal*